

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

PRESCOD JEAN-FRANCOIS	:	DOCKET NO. 6:11-cv-0707
		Section P
VS.	:	JUDGE DOHERTY
WARDEN VIATOR, ET AL.	:	MAGISTRATE JUDGE HILL

REPORT AND RECOMMENDATION

Currently before the court is a Motion to Dismiss filed on behalf of the respondent in the above-captioned *habeas corpus* matter. [doc. 19]. This matter has been referred to the undersigned magistrate judge for review, report, and recommendation in accordance with 28 U.S.C. §636(b)(1)(B).

A petition for writ of *habeas corpus* pursuant to 28 U.S.C. § 2241 was filed by *pro se* petitioner, Prescod Jean-Francois, on May 5, 2011, challenging his continued detention in post-removal-order custody. The petition alleges that petitioner, born in the Bahamas but allegedly incorrectly deemed a citizen of Haiti, was ordered removed on January 25, 2005, that he was taken into custody on April 7, 2010 and, when he was unable to be removed, that petitioner was released on an order of supervision on September 28, 2010. The petition further alleges that petitioner was again detained on December 6, 2010, that he has remained in the custody of ICE pursuant to INA § 241 since that date, and, that despite his cooperation, the ICE has been unable to remove him. Thus, petitioner claims that he has been detained beyond both the 90 day removal period and the jurisprudential presumptively reasonable six month removal period in violation of the principles established by the Supreme Court in

Court in *Zadvydas v. Davis*, 533 U.S. 678, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).

Accordingly, petitioner requests that this court order his release from custody.

In response to this petition, the respondent filed the instant Motion to Dismiss. In support of this motion, the government presents documentation which establishes that the petitioner was released from post-removal-order detention pursuant to an Order of Supervision on October 11, 2011. *See* Declaration of Brian Gueringer, Govt. Ex. A.

At the time that this petition was filed, Petitioner was in detention pursuant to the statutory authority of § 241 of the Immigration and Nationality Act (INA), codified at 8 U.S.C. § 1231, and he sought to have the court review his post-removal-order detention. However, because the petitioner is no longer in custody, his challenge to his post-removal-order detention is now moot and should be dismissed. For this reason,

IT IS RECOMMENDED that the respondent's Motion to Dismiss [doc. 16] be GRANTED and that this petition be DENIED AND DISMISSED WITH PREJUDICE as moot.

Under the provisions of 28 U.S.C. § 636(b)(1)(C), the parties have fourteen (14) days from service of this Report and Recommendation to file any objections with the Clerk of Court. Timely objections will be considered by the district judge prior to a final ruling.

**FAILURE TO FILE WRITTEN OBJECTIONS TO THE PROPOSED
FINDINGS AND RECOMMENDATIONS CONTAINED IN THIS REPORT**

**WITHIN FOURTEEN (14) DAYS FROM THE DATE OF ITS SERVICE SHALL
BAR AN AGGRIEVED PARTY FROM ATTACKING ON APPEAL, EXCEPT
UPON GROUNDS OF PLAIN ERROR, THE UNOBJECTED-TO PROPOSED
FACTUAL FINDINGS AND LEGAL CONCLUSIONS ACCEPTED BY THE
DISTRICT COURT.**

THUS DONE AND SIGNED in Chambers at Lafayette, Louisiana, January 11,
2012.

A handwritten signature in black ink, reading "C. Michael Hill", written over a horizontal line.

C. MICHAEL HILL
UNITED STATES MAGISTRATE JUDGE